

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 1:92CR0035-001
	)	1:07CR606
Plaintiff,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
v.	)	MAGISTRATE JUDGE VECCHIARELLI
	)	
MICHAEL K. LEGGETT,	)	
	)	
Defendant.	)	<u>ORDER</u>

The Defendant was originally sentenced on November 16, 1992 by the Honorable George W. White to 115 months custody to the Bureau of Prisons and three years Supervised Release for violating 18 U.S.C. §2113(a) - Bank Robbery , (Count 1), and 18 U.S.C. §111(a) - Assault on a Federal Officer, (Count 2). The Defendant was released October 11, 2007 from the United States Prison, Terre Haute, IN, at which time Defendant's Supervised Release commenced. The Defendant reported to the U.S. Pretrial Services and Probation Office on October 12, 2007. On October 12, 2007, the Defendant was arrested by Federal Protective Services Officer Brian Smith at 801 West Superior Avenue, Cleveland, Ohio and cited for Disorderly Conduct.

On October 16, 2007, the Court received a “Violation Report - Emergency Warrant Request” from the Pretrial/Probation office. The Violation Report indicated the Defendant acted aggressively, displayed violent conduct, and made threats to Pretrial/Probation Officers. An arrest warrant was issued.

A Supervised Release Violation hearing was held on March 24, 2008. All counsel and Henry Serna, Probation Officer, were present.

Henry Serna testified about the events surrounding Defendant’s violations.

Michael K. Leggett testified under oath about the events surrounding the violations.

The Government stated the Defendant made threats against a Federal Law Enforcement Officer, was a danger to the community and recommended the Court impose the statutory maximum with no additional term of Supervised Release.

Defense counsel argued the Government failed to prove, by a preponderance of the evidence, the Defendant was a threat and/or danger to the community according to 18 U.S.C §115(a) where the elements of the statute include “intent to assault or with intent to retaliate.”

The Court, after having had an opportunity to listen to testimony from both sides, ruled the Defendant violated Law Violation #1- 18 U.S.C. 115(a)(1)(B) and(b)(4) - Threat Against a Federal Official; and Law Violation #3 - The Defendant assaulted another inmate at the Euclid, Ohio City Jail. The Court found Defendant did not violate Law Violation #2 - On October 12, 2007, the Defendant was arrested by Federal Protective Services Officer Brian Smith at 801 West Superior Avenue, Cleveland, Ohio and cited for Disorderly Conduct.

In addition to, and supplementing, the oral explanation and ruling given by the Court at

the Violation hearing on March 24, 2008, the Court finds as follows:

- (1) Probation Officer Serna's credibility was bolstered by his specific recollection of dates and events;
- (2) Probation Officer Serna's credibility was further bolstered by Tara Chamberlain's letter to the Probation Department (Government's Exh. 2) specifically stating that ... "Mr. Leggett's anger continued to elevate and he threatened to harm his PO. Mr. Leggett used very foul language today and stated that he plans to return to the federal building to place physical harm upon his PO. I attempted several times to de-escalate Mr. Leggett and contract for the PO's safety, however Mr. Leggett was firm in his intent to harm the PO. . ."
- (3) Probation Officer Serna's testimony that he spoke with Tara Chamberlain and she advised him over the phone that Defendant said he was going to "come back and fuck Serna up," is consistent with the Exhibits and testimony presented to the Court at the hearing.
- (4) Probation Officer Serna's credibility was further bolstered by the phone messages left by Dr. Matthews of St. Vincent Charity, stating Dr. Matthews' concern for Probation Officer Serna's safety. Serna followed up with Dr. Matthews on the phone, whereby Dr. Matthews reiterated his concern that Serna would be assaulted and Dr. Matthew's belief that Defendant would carry out the threat.
- (5) Probation Officer Serna's credibility was further bolstered by many of Defendant's own admissions: (a) He had fifty incidents of violence in prison; (b) He previously assaulted a Federal Corrections Officer; (c) He previously

assaulted two United States Deputy Marshals; (d) He threatened a United States District Court Judge; and (e) He assaulted his previous defense counsel.

Probation Officer Serna's credibility was at issue because the Defendant denied ever making any threats against Serna. However, the overwhelming evidence compelled the Court to conclude that Probation Officer Serna's testimony was truthful and the admitted hearsay statements of Tara Chamberlain and Dr. Matthews were also credible.

Finally, the Court finds that because Defendant adamantly believed he was being "set up" by the Probation Department via Officer Serna and believed Serna was intentionally not performing his duty, this Court's finding that Defendant did threaten Serna with bodily harm, satisfies the elements in 18 U.S.C. §115(a)(1)(B) and (2) Threat Against a Federal Official.

The Court finds that application of the policy statements found in Chapter 7 of the Guidelines Manual result in a revocation range of 24 to 30 months because the Court found Grade A and Grade C violations. U.S.S.G. §7B1.4(a). Also, the range is premised upon the Court finding Defendant having a Criminal History Category IV. U.S.S.G § 7B1.4 App. Note 1. However, because the statutory maximum in this case is 24 months, (Class C Statutory felony), the guideline range may not exceed that time , 18 U.S.C. § 3583(c).

Therefore, the Court orders Defendant imprisoned for a term of 24 months with no Supervised Release because Defendant's history, coupled with the facts in this case, leads the Court to conclude that Defendant is not amenable to further supervision. Defendant shall be given credit for time served.

IT IS SO ORDERED.

S/Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
United States District Judge

March 28, 2008